REMARKS

In view of the foregoing amendments and the following representations, reconsideration and allowance of the above-identified application is respectfully requested.

Applicants gratefully acknowledge the Examiner's entry and consideration of the Declaration of G. Michael Bryner as well as the subsequent withdrawal of the prior rejections based upon Chen, United States Patent No. 6,270,805.

Upon entry of the present amendment, Claims 38-55 will be pending in the present application. Claims 38 and 39 have been amended, and new claims 51-55 have been added. No new matter is added by the amendments or newly presented claims. Support can be found on page 7, lines 19-20 (ratio of first to second pellets); page 8, lines 16-18 (ratio of first to second pellets); page 12, line 20 to page 13, line 22 (ratio of pellets, release pHs and locations in a patient's GI tract); page 16, lines 1-9 (capsule and tablet dosage forms); and Examples 2 and 4 of the Application as originally filed.

On page 2 of the Office Action, the Examiner rejected claims 38-50 under 35 U.S.C. §103(a) as being unpatentable over the combined disclosure of Percel, et al., United States Published Patent Application No. 2001/0046964 (hereinafter Percel) in view of Shah et al., United States Patent No. 6,126,969 (hereinafter Shah).

In view of the above amendments, reconsideration is requested.

The pending claims have been amended to clearly indicate the claimed bupropion composition comprises three separate and distinct bupropion components: 1) an immediate release component that releases the bupropion upon administration of the composition to a patient; 2) enteric release pellet(s) that release the bupropion in the upper gastrointestinal tract of a human patient (at a pH of about 4.8 [claims 53-55]); and 3) sustained release pellet(s) that release the bupropion in the lower gastrointestinal tract of a human patient (at a pH of about 7 [claims 53-55]).

The claims have also been amended to indicate the ratios of enteric pellets to sustained release pellets is about 30:70 to 70:30.

Newly presented claims 51 and 52 recite specific embodiments of the present invention. Specifically, new claim 51 recites a once a day bupropion capsule consisting of: 1) an immediate release bupropion component; 2) enteric bupropion pellet(s); and 3) sustained release bupropion pellet(s). New claim 52 recites a once a day bupropion tablet consisting of: 1) an immediate release bupropion component; 2) enteric bupropion pellet(s); 3) sustained release bupropion pellet(s) and 4) 25-40 weight percent of a pharmaceutically acceptable tableting excipient.

It is respectfully submitted the currently pending claims are patentable over the combination of Percel and Shah because a skilled artisan reviewing the two references would not be lead to the currently claimed once a day three-component bupropion formulation that exhibits the recited pharmacokinetic parameters with an expectation of success.

As stated in previous submissions, Percel fails to disclose or suggest a composition comprising an enteric coated pellet and a separate and distinct sustained release pellet. Percel teaches a pellet comprising: a drug core coated with 1) an enteric coating and 2) a sustained release coating. This dual coated pellet results in a pellet that has a substantial lag time prior to the releasing any drug. See generally, Tables 2 [¶0024], 4 [¶0027], 5 [¶0029] and 7 [¶0031] of Percel. This lag time is caused by the need of both the enteric layer and the sustained release layer to hydrate and/or dissolve prior to the patient's gastrointestinal fluid reaching the drug core and dissolving the drug.

This dual coating structure taught by Percel will not allow the release of a substantial portion of the bupropion in the upper portion of the patient's GI tract (around a pH of 4.8) and the release of a substantial portion of the bupropion in the patient's lower GI tract (around a pH of 7) as required by the pending claims.

In addition to failing to provide any guidance to a skilled artisan for preparing a three-component once-a-day bupropion composition as recited in the pending claims, Percel, fails to provide any guidance for preparing a once-a-day bupropion formulation that meets the recited pharmacokinetic parameters. Applicants agree that Percel does disclose bupropion hydrochloride in ¶ 0020 along with other potential drugs but it fails to provide any working examples for this highly water soluble and sensitive drug. If the skilled artisan were to select the bupropion hydrochloride from the list of potential drugs and insert it into the formulation taught by Percel, there is no guidance provided by Percel on the type and amount of excipients to be used with the bupropion to obtain the recited pharmacokinetic parameters or that the recited pharmacokinetic parameters are even desired. Percel lacks any pharmacokinetic data that would allow or motivate a skilled artisan to prepare a once-a-day bupropion dosage form let alone a bupropion dosage form that releases the bupropion at three different times (locations in a patient's GI tract) to provide for a safe and effective once-a-day bupropion composition.

The addition of Shah to Percel does not overcome the above deficiencies. Applicants respectfully submit a skilled artisan would not combine Shah with Percel to arrive at the presently claimed dosage form because Shah does not mention bupropion, and it does not provide any guidance on how to prepare a once-a-day bupropion composition because, like Percel, Shah lacks any pharmacokinetic data.

It is Applicants understanding the Examiner relies upon Shah for the teaching of immediate release components combined with sustained release components to provide a pulsatile release profile. See page 3 of the December 29, 2010 Office Action. Applicants do not disagree with the Examiner's general characterization of Shah, however. A skilled artisan reading Shah in light of Percel would not be motivated to modify and/or deviate from the two-component composition of Shah and arrive at the three-component composition recited in the pending claims.

Because the pending claims require a three-component composition wherein each component releases the bupropion at a distinct region of a patients GI tract and not a two-component composition as taught by the combination of Percel and Shah, Applicants respectfully submit the pending claims are patentable over the combination of Percel and Shah.

In light of the foregoing amendments and remarks, Applicants respectfully submit that the claims of the present application are in proper form for allowance. Early and favorable consideration is therefore earnestly solicited and respectfully requested. If the Examiner does not believe the pending claims are in proper form for allowance, Applicants invite the Examiner to call the undersigned to discuss ways to further expedite prosecution of this application.

Respectfully submitted,

/martin p. endres/

Martin P. Endres
Reg. No. 35,498

MAILING ADDRESS
Hedman & Costigan, P.C.
1185 Avenue of the Americas
New York, NY 10036
(212) 302-8989